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**BENNINGTON** — A law firm hired by the Town of Bennington has billed taxpayers \$170,387 so far to draw up confidential agreements and participate in Superfund negotiations kept secret from the public, town records show.

Pepe & Hazard, a Hartford, Conn., law firm, was hired last year by town officials to represent the town in negotiations over the Bennington Landfill Superfund site.

To date, no lawsuits have been filed against the town over the Superfund site and the town's lawyers have not set foot in any court.

As part of the town's attempt to recoup some of the expected costs to clean up the landfill, the law firm — with its top partner billing taxpayers \$200 an hour — has filed a claim against the estate of a Pownal garbage hauler who left behind only four old trucks and 50 rubber garbage cans when he died, a review of town and legal records has disclosed.

Bills submitted to the town by Pepe & Hazard shed some light on the secretive negotiations of the town, the Environmental Protection Agency and private corporations which, along with the town, are being held responsible for alleged pollution at the Houghton Lane dump.

The town hired Pepe & Hazard to help Bennington negotiate with the EPA as well as the other companies, each which want to pay as little as possible for an EPA-mandated study and cleanup of the landfill on Houghton Lane.

The cleanup has not begun — the companies and the EPA are currently fighting about how to study the site — but Pepe & Hazard bills show Bennington taxpayers' legal costs continue to pile up.

The fees appear to support critics who say the Superfund law lines lawyers' pockets faster than it cleans up toxic sites.

The records show that much of the lawyers' time is spent haggling with other lawyers from private corporations involved in the cleanup. Those corporations have been pressuring the town to pay for a greater portion of the cleanup costs, town officials said.

Dick Sears, the chair of the Bennington Board of Selectors, said taxpayers are better served by paying legal costs now rather than later.

"They absolutely appear to be very high," Sears said of the bills from Pepe & Hazard.

"But over the long term the potential mil-

# Taxpayers billed \$170,387 for Superfund legal costs

lions of dollars that the (Superfund cleanup) could cost taxpayers (means that these funds) will be money well spent," Sears said. Last year the EPA told the town, which owned and operated the landfill, and many local companies that they were responsible for alleged pollution at the site.

Pepe & Hazard invoices, available to the public under Vermont's open records law, disclose that:

- The town's lawyer, James A. Thompson Jr., is billing Bennington taxpayers \$200 an hour for his time. At Thompson's billing rate, one daylong meeting in New York City cost taxpayers \$2,900.

Much of the legal work has been delegated to less expensive lawyers and paralegals. A second Pepe & Hazard lawyer, Peter E. Hapke, charges a comparatively cheap \$84 an hour.

Sears said Thompson was worth his billing rate. "I'm convinced you need an expert in the field. Jim Thompson's company is well respected, he knows EPA inside and out," Sears said.

"We're talking about experts in a particular field and they come higher," Sears said. "If you hire a doctor in a specific field, they're going to be more expensive than a family practitioner."

- Two of Pepe & Hazard's bills are for services that may not be authorized under the town's contract with the firm, according to town officials.

On June 19, Thompson traveled to Bennington. The trip, slightly less than three hours long, cost taxpayers \$560.

Pepe & Hazard lawyers have also billed taxpayers \$41 for meals and \$89 for hotel bills.

Asked about the bills, town officials could not explain why taxpayers were charged for food and travel costs. They said the town is not supposed to pay for these costs under Bennington's contract with the firm. Thompson declined to comment on his contract with the town.

- The lawyers have charged the town \$450 for work related to researching Vermont's public records law and drawing up confidentiality agreements that keep the details of the Superfund negotiations secret from the taxpayers who are funding the negotiations.

"This is a strange relationship here," Sears acknowledged. "You've got the public government on one hand and you've got a lot of private companies. If we release all of this information, it's potentially harmful to both the companies' and the town's positions."

- The lawyers have filed a claim against the estate of Harry F. Andrews. The Pownal waste hauler died in December 1990 but the EPA cited him posthumously for his part in hauling potentially toxic waste.

The Andrews estate is valued at \$21,450, according to an inventory of the estate. It is made up of an \$8,000 truck — with an \$8,000 lien against it — two \$2,000 trucks, a \$650 1975 Ford truck, and 50 rubbish containers worth \$16,750.

"I don't see why the town would be harassing a widow in this way," said attorney Peter M. Lawrence, who is representing Andrews' wife, Dorothy Andrews. "It seems to me they must be spending more on lawyers' fees than they can hope to recover from this marginal claim."

The town's claim does not specify how much the attorneys think the estate owes. But the claim points out that the total cost for the cleanup "could expand upwards of \$10 to \$20 million."

Town Manager Kevin Ryan said the lawyers filed the claim to meet a deadline but have not decided whether they will pursue it. "There was a deadline for filing and so we filed," he said.

Lawrence has protested the claim, saying it was filed too late and the town has provided no proof that Andrews hauled toxic waste to the landfill. A hearing is set for Feb. 27.

- Taxpayers have paid more than \$2,750 for the town's lawyers to haggle with other companies' lawyers about what proportion each should pay to the EPA.

In a typical task, the lawyers drafted the town's answers to a questionnaire designed to help resolve the bickering over costs among the town and the companies. The cost: \$540.

Town officials said they have been frustrated by the private companies' attempts to pressure taxpayers to foot too much of the cleanup cost at the dump.

"The private businesses wanted to shift a major portion of the responsibility onto the town," Sears said.



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"Quite frankly, the town hasn't dumped anything there and I don't see that we're as culpable as those who dumped it there," he said, referring to the companies, which include Eveready Battery Co. Inc., Johnson Controls, Bennington Pottery, the *Pennysaver Press* and *Banner Publishing Corp.*

"All we did was operate it under a state license," Sears said about the town's operation of the landfill.

In September, the town even considered withdrawing from the group of companies. Officials asked for Pepe & Hazard's advice — \$60 worth — but decided to stay in the group.

Sears said the "average" Bennington taxpayer has not realized that the entire cost for the Bennington Landfill Superfund site — in legal, engineering and other fees — will cost millions.

"We're going to do the best we can to come up with a level tax rate," he said. "It may necessitate some cutting because we're also looking at the possibility of a (new) appraisal.

"None of us want to spend \$180,000 on legal fees," Sears said. "We'd much rather put that into leveling the tax rate or improving services."

"We had hoped the agreements would all be made and there would be a higher level of cooperation that wouldn't require as many legal fees," Sears said.

Kelton Miller, the publisher of the *Bennington Banner* and a vocal critic of the Superfund process, complained that lawyers for the private corporations are getting rich as the companies go through the same legal maneuvering as the town has.

Miller said that at meetings of the town and the 11 companies that have agreed to perform the study, each company brings its lawyer.

"Between the time they served the goddamn soup and the time they served the dessert, there were probably 5,000 billable hours," Miller said. "This thing is stinking."

Superfund Records Center

STATE: Bennington  
BREAK: 13.3  
OTHER: 527812